

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RODNEY CALDWELL,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:22-CV-61
)	
ALL STAFF AT ERIE COUNTY PRISON, et al,)	
)	
Defendants.)	

MEMORANDUM ORDER

This action was received by the Clerk of Court on February 16, 2022. The matter was referred to United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

Plaintiff sought leave to proceed in forma pauperis. In his proposed complaint, Plaintiff, an inmate at the Erie County Prison, complained that his constitutional rights had been violated when he was exposed to and later contracted COVID-19 from his cellmate.

By Order dated June 2, 2022, Judge Lanzillo, after an initial screening of the proposed complaint, directed that Plaintiff file an amended complaint by July 1, 2022. ECF No. 5. Plaintiff failed to comply with that order.

On July 11, 2022, Magistrate Judge Lanzillo issued a Report and Recommendation recommending that Plaintiff's motion requesting in forma pauperis status be granted and that this action be dismissed for failure to state a claim in accordance with 28 U.S.C. § 1915(e) or,

alternatively, based upon Plaintiff's failure to prosecute. Plaintiff was allowed to file Objections until July 28, 2022.

A copy of the Report and Recommendation was mailed to Plaintiff at this address of record at the Erie County Prison. That mailing was returned to this Court as undeliverable.

Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Local Rule 72(D)(2).


After *de novo* review of the proposed complaint and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 9th day of August 2022;

IT IS ORDERED that Motion for Leave to Proceed in forma pauperis [ECF No. 1] is GRANTED and that the Clerk of Court is directed to file the proposed complaint (presently lodged at ECF No. 1-1).

IT IS FURTHER ORDERED that this case is dismissed for failure to state a claim pursuant to 28 U.S.C. § 1915(e) or, alternatively, based upon Plaintiff's failure to prosecute.

AND, IT IS FURTHER ORDERED that the report and recommendation of Magistrate Judge Lanzillo, issued on July 11, 2022 [ECF No. 6] is adopted as the opinion of the court.


s/ Susan Paradise Baxter
SUSAN PARADISE BAXTER
United States District Judge